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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,140	10/15/2003	Brian Xiaoqing Song	9082	6230
27752	7590	01/05/2007	EXAMINER	
THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			MARKOFF, ALEXANDER	
			ART UNIT	PAPER NUMBER
			1746	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	01/05/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/686,140	SONG ET AL.
	Examiner	Art Unit
	Alexander Markoff	1746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-19 and 21 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-19 and 21 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 15 October 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 3/3/05, 4/26/05

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of claims 1-19 and 21 and cancellation of non-elected claims in the reply filed on 10/30/06 is acknowledged.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim s 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claims require the device to be liquid permeable and at the same time able to substantially retain a liquid detergent composition.

Such is not enabled. If the device is liquid permeable it will not retain the liquid.

While it is possible that the device may be permeable for one liquid and not permeable for another liquid, but it not what is claimed.

Moreover, the claims recite the device with the orifice sized up to 10 mm in width and up to the full length of the sidewall. The device with such opening in the wall will not retain liquids.

It appears that the claims are not enabled or the term "liquid" is not used correctly.

If the applicants meant that the device is permeable for water and solutions having low viscosity and at the same time able to retain liquids with high viscosity or gels, than the claims should be interpreted as not enabled for the entire scope.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-19 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because it is not clear what structure is required by recitation of the claimed functions or intended use.

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

The claims are further indefinite because the scope of the term "liquid" as used in the claims is not clear.

Claim 7 and dependent claims are indefinite because the scope of the term "any shape that is effective ..." is not clear.

Claim 8 is indefinite because it is not clear what shape is referenced as "combinations thereof". How can an orifice have a shape, which is a combination of the shapes? What shape is referenced? The claim is further indefinite because it is not clear how can the orifice comprise a shape.

Claim 9 is indefinite because it is not clear what is referenced by "between from about... to about" .

Claim 10 is indefinite because it is not clear how the recited requirement to the detergent composition not to escape limits the structure of the device. What structure is required.

Claim 19 is indefinite because it is not clear what is required by "combination thereof". How can the devise comprise the claimed part and combinations thereof? Combinations of what are referenced?

Claim 21 is indefinite because it is not clear what is referenced as "information in association". What association is required? Further, how can the device comprise information? What is referenced as information?

Claim 21 is also indefinite because the term "said dissolved liquid detergent composition" lacks proper antecedent basis.

Claim 21 is indefinite because it is not clear what is referenced as "other suitable". What is the scope of the term "other suitable container".

***Claim Objections***

6. The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-8 and 11-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lemaire et al (US Patent No 6,048,501).

Lemaire et al teach the device as claimed. See entire document, especially Figures 1-3 and the related description and column 6, lines 11-13.

The device of Laimere et al has a claimed structure and thereby is capable of performing the claimed functions.

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

12. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemaire et al.

Lemaire et al do not specifically teach a kit comprising a device and a package and instructions.

However, providing consumer products in the packaged form with instructions how to use the product is notoriously well known. Almost any retail product is packaged and provided with instructions.

It would have been obvious to an ordinary artisan at the time the invention was made to provide the device of Lemaire et al in the packaged form with instructions in order to have in the form ready for retail and consumer's use.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lemaire et al in view of any one of Christie et al and Smith et al.

Lemaire et al teach the device as claimed except for the specific recitation of rectangular orifice and the specifically claimed dimensions of orifice.

However, Christie et al and Smith et al teach that rectangular shape of orifices in the devices for dispensing detergents was conventional in the art.

It would have been obvious to an ordinary artisan at the time the invention was made to use the conventional shape for the orifices in the device of Lemaire et al with reasonable expectation of adequate results, especially in view of absence of adequate results, because Christie et al and Smith et al teach such shape as conventional.

It would have also been obvious to an ordinary artisan at the time the invention made to find an optimum dimensions for the orifices by routine experimentation depending from the application and construction requirements.

### ***Conclusion***

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No 1,351,273 is cited to show the state of the prior art with respect to detergent dispensers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Alexander Markoff  
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Art Unit 1746

AM

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PRIMARY EXAMINER